

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID L. JOHNSON JR.,)	8:09CV356
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DOUGLAS COUNTY MEDICAL)	
DEPARTMENT,)	
)	
Defendant.)	

Plaintiff filed his Complaint in this matter on September 23, 2009. (Filing No. [1](#).) However, at the time of filing, Plaintiff failed to sign his Complaint. (Filing No. [11](#).) On November 10, 2009, Plaintiff submitted a signed Complaint and on February 26, 2010, Plaintiff paid the initial partial filing fee. Thus, the court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate pursuant to [28 U.S.C. § 1915A](#).

I. SUMMARY OF COMPLAINT

Plaintiff filed his Complaint against one Defendant, the Douglas County, Nebraska Medical Department. (Filing No. [12](#) at CM/ECF p. 1.) Plaintiff is currently incarcerated. (Filing No. [18](#).)

Condensed and summarized, Plaintiff alleges that on January 28, 2009, while incarcerated at the Douglas County Correctional Center (“DCC”), Plaintiff requested his seizure medication before being transported to a court hearing. (Filing No. [12](#) at CM/ECF p. 4.) Unknown DCC personnel refused to provide medication to Plaintiff, and threatened Plaintiff with “lockdown” if he continued to request medical attention. (*Id.*) While waiting in a courthouse holding cell, Plaintiff had a seizure and was transported to the hospital for emergency treatment. (*Id.*) On April 13, 2009,

Plaintiff suffered another seizure due to DCC Medical staff's improperly lowering the dosage of Plaintiff's seizure medication. (*Id.* at CM/ECF p. 5.) As a result of these two incidents, Plaintiff suffered a "small stroke," "Bells Palsy," and nerve damage. (*Id.*) Plaintiff does not request any relief.

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. See [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

A pro se plaintiff must set forth enough factual allegations to "nudge[] their claims across the line from conceivable to plausible," or "their complaint must be dismissed" for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 569-70 (2007); see also [Ashcroft v. Iqbal](#), 129 S. Ct. 1937, 1950 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff's complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff's allegations must be construed liberally. [Burke v. North Dakota Dep't of Corr. & Rehab.](#), 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

Liberally construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights

protected by the United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993).

III. DISCUSSION OF CLAIMS

Plaintiff names “Douglas County Medical Dept.” as the only Defendant in this matter. (Filing No. 12 at CM/ECF p. 1.) The court liberally construes claims against this Defendant as claims against Douglas County, Nebraska. As a municipal defendant, Douglas County may only be liable under section 1983 if its official “policy” or “custom” caused a violation of the plaintiff’s constitutional rights. Doe By & Through Doe v. Washington County, 150 F.3d 920, 922 (8th Cir. 1998) (citing Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694 (1978)). An “official policy” involves a deliberate choice to follow a course of action made from among various alternatives by an official who has the final authority to establish governmental policy. Jane Doe A By & Through Jane Doe B v. Special School Dist. of St. Louis County, 901 F.2d 642, 645 (8th Cir.1990) (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 483 (1986)). To establish the existence of a governmental custom, a plaintiff must prove:

- 1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity’s employees;
- 2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity’s policymaking officials after notice to the officials of that misconduct; and
- 3) That plaintiff was injured by acts pursuant to the governmental entity’s custom, i.e., that the custom was the moving force behind the constitutional violation.

Jane Doe, 901 F.2d at 646.

Here, Plaintiff does not allege that there is a continuing, widespread, persistent pattern of unconstitutional misconduct by Douglas County's employees, or that Douglas County's policymaking officials were deliberately indifferent to or tacitly authorized any unconstitutional conduct. In addition, Plaintiff does not allege that an unconstitutional custom was the moving force behind his injuries and does not request any relief. Accordingly, Plaintiff has failed to allege sufficient facts to "nudge" his claims against Douglas County across the line from conceivable to plausible under the Jane Doe standard.

However, on its own motion, the court will permit Plaintiff 30 days in which to amend his Complaint to sufficiently allege a claim against Douglas County in accordance with the Jane Doe standard. Any amended complaint shall restate the allegations of Plaintiff's prior Complaint (filing no. 12), and any new allegations. Failure to consolidate all claims into one document will result in the abandonment of claims. If Plaintiff fails to file an amended complaint in accordance with this Memorandum and Order, this matter will be dismissed without prejudice for failure to state a claim upon which relief may be granted.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until **April 21, 2010**, to amend his Complaint and clearly state a claim upon which relief may be granted against Douglas County, Nebraska, in accordance with this Memorandum and Order. If Plaintiff fails to file an amended complaint, Plaintiff's Complaint will be dismissed without further notice for failure to state a claim upon which relief may be granted.

2. In the event that Plaintiff files an amended complaint, Plaintiff shall restate the allegations of the current Complaint (filing no. 12), and any new

allegations. Failure to consolidate all claims into one document may result in the abandonment of claims.

3. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for amended complaint on **April 21, 2010**, and dismiss if none filed.

4. Plaintiff shall keep the court informed of his current address at all times while this case is pending. **Failure to do so may result in dismissal without further notice.**

DATED this 19th day of March, 2010.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.